No. 92-1123

In the Supreme Court of the United States

OCTOBER TERM, 1992

IZUMI SEIMITSU KOGYO KABUSHIKI KAISHA, PETITIONER

v.

U.S. PHILIPS CORPORATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether the court of appeals erred in granting respondents' joint motion to vacate the judgment of the district court after the case, while pending on appeal, became moot as a result of the parties' settlement.

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INTEREST OF THE UNITED STATES

The federal government "is a party to a far greater number of cases on a nationwide basis than even the most litigious private entity." *United States* v. *Mendoza*, 464 U.S. 154, 159 (1984). As a party to numerous cases in the federal system that involve recurring issues of public importance (*id.* at 159-163), the federal government is vitally interested in the question of whether vacatur is available when parties settle cases on appeal.

STATEMENT

1. Petitioner is a manufacturer of electric razors. Pet. 2. Petitioner sells its razors to distributors in the United States, including Windmere Corporation (Windmere) and Sears, Roebuck & Co. (Sears). Pet. 2-3. In February, 1984, petitioner agreed to indemnify Windmere for claims arising from the sale of petitioner's razors, including any expenses associated with litigation. Pet. App. A11-A12.[1]

In October 1984, U.S. Philips Corporation and North American Philips Corporation (Philips) filed suit in the United States District Court for the Southern District of Florida against petitioner and Windmere. The suit alleged that petitioner and Windmere had infringed Philips' rotary electric shaver patent and that Windmere had engaged in unfair competition by infringing the trade dress rights Philips claimed for the configuration of its shaver. J.A. 12a-20a. Windmere filed an antitrust counterclaim against Philips and its related Dutch corporation, N.V. Philips Gloeilampenfabrieken (also referred to as Philips).

A jury found for Philips on its patent infringement claim and awarded it $6,500 in damages. J.A. 21a. Final judgment on that claim was entered in 1986, and neither petitioner nor Windmere appealed that judgment. Pet. App. A2; Pet. Br. 3. The jury returned a verdict in favor of Windmere on Philips' unfair competition claim, apparently finding that Philips' alleged trade dress was functional and therefore not protectable. The district court, however, ordered a new trial on Philips' unfair competition claim and directed a verdict for Philips on Windmere's antitrust counterclaim. Pet. App. A28-A29; J.A. 21a, 25a-40a.

Windmere took an interlocutory appeal to the United States Court of Appeals for the Federal Circuit from the directed verdict in favor of Philips on Windmere's antitrust counterclaim. That court reversed the directed verdict and remanded for a new trial on the counterclaim. See *U.S. Philips Corp.* v.

[1] Petitioner apparently has a similar agreement with Sears. Pet. Br. 7.

Windmere Corp., 861 F.2d 695 (1988), cert. denied, 490 U.S. 1068 (1989); J.A. 45a-78a.

2. After a second trial, the jury returned a verdict for Windmere on both Philips' unfair competition claim and Windmere's antitrust counterclaim.[2] The jury awarded Windmere more than $89 million in trebled damages on its antitrust counterclaim, plus attorney's fees, interest, and costs. The district court entered separate judgments for Windmere on the claim and counterclaim. Pet. App. A7-A8; Pet. Br. 3.

Philips appealed both judgments to the Federal Circuit. Before the court of appeals decided the appeals, however, Philips and Windmere reached a settlement of their dispute. Philips agreed to pay Windmere $57 million, and the parties agreed to execute mutual general releases. In addition, the parties agreed that they would jointly request the court of appeals to vacate the district court's judgments on Philips' unfair competition claim and on Windmere's antitrust counterclaim, although Windmere's right to receive the $57 million was to be unaffected if the court of appeals declined to do so. Pet. App. A17-A21. After Philips and Windmere filed that joint motion, petitioner sought to intervene on appeal for purposes of opposing vacatur. J.A. 162a-165a.

3. The court of appeals vacated the judgments of the district court and remanded with instructions to dismiss the case with prejudice. Pet. App. A1-A6. The court first held that petitioner lacked standing to oppose vacatur of the district court's judgments. *Id.* at A2-A5. The court explained that petitioner "is not a party to this appeal or any aspect thereof, was not a party to the trial of these claims, and did not file an appearance in the district court trial of these issues." *Id.* at A3.[3] The court also found that petitioner's status as

[2] Petitioner apparently financed Windmere's expenses in defending against the unfair competition claim at the second trial, but did not participate as a party. Pet. Br. 2-3; Pet. 4; Jt. Br. in Opp. 2.

[3] The court noted that petitioner did not contradict Philips' assertion that petitioner "took affirmative steps [before the district court] to avoid

Windmere's indemnitor was insufficient to confer standing, noting that the certificate of interest filed in the appeal identified Windmere as the real party in interest and that petitioner had not sought either intervention or joinder before the district court. Pet. App. A4.[4]

The court of appeals then granted the parties' joint motion to vacate. Pet. App. A5-A6. Stating that it did "not view vacatur as automatic under all circumstances," the court noted that, under its precedents, "vacatur of the judgment at trial is appropriate when settlement moots the action on appeal." *Id.* at A5. The court explained that this Court's decisions in *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950), and *City Gas Co.* v. *Consolidated Gas Co.*, 111 S. Ct. 1300 (1991), provided authority for that approach. Pet. App. A5. The court declined to follow the decisions of other courts of appeals that do not vacate district court judgments upon settlement, observing that "the settlement [in this case] * * * includes all parties to the appeal" and that "[a]ll of the claims of the judgments were appealed, and have now become entirely moot." *Id.* at A6.

4. In 1985, before the court of appeals' decision in this case, Philips had brought an action in the United States District Court for the Northern District of Illinois against petitioner and Sears. In that action, Philips alleged that petitioner and Sears had infringed its patents and that Sears had engaged in unfair competition in selling petitioner's razors. Pet. App. A22-A30, A36-A38; Pet. Br. 4-5. After the Florida district court in the instant case entered judgment on the unfair

being characterized or involved as a party in the trial of these counts." Pet. App. A3.

[4] The court also rejected petitioner's argument that it had standing to oppose vacatur because the district court's judgment had served as the basis for a grant of summary judgment on preclusion grounds in another lawsuit then pending in Illinois involving Philips, petitioner, and Sears. Pet. App. A4; see *id.* at A22-A30; pp. 4-5, *infra*. The court explained that petitioner was not a party to the claim on which judgment was entered in the Illinois action. Pet. App. A4.

competition claim in favor of Windmere, the Illinois district court granted summary judgment in favor of Sears on Philips' unfair competition claim, finding that the Florida judgment precluded relitigation of that issue. Pet. App. A28-A30.[5]

Thereafter, as a result of the Federal Circuit's vacatur of the Florida district court's judgment in this case, the Illinois district court vacated its previous summary judgment order and reinstated Philips' unfair competition claim against Sears. Pet. App. A37-A44. The Federal Circuit has authorized an interlocutory appeal from that decision under 28 U.S.C. 1292(b), and that appeal is presently pending. Pet. App. A46-A49; Pet. 5 n.5.

SUMMARY OF ARGUMENT

I. Under *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950), federal appellate courts are generally required to grant a motion to vacate the judgment below when a case becomes moot while pending on appeal. This Court has consistently followed the *Munsingwear* procedure in cases that become moot by reason of the parties' settlement when the settlement includes a request for vacatur. To be sure, *Munsingwear* involved mootness resulting from "happenstance"—an extrinsic event—rather than agreement of the parties, but this Court's cases make clear that *Munsingwear* is not limited to the context of mootness by happenstance. Rather, vacatur is appropriate whenever a case pending on appeal becomes moot as a result of either the parties' mutual agreement or the unilateral conduct of the party that prevailed below.

II. The Court's practice of vacating the judgment below when a pending case becomes moot as a result of the parties'

[5] Petitioner had filed antitrust counterclaims against Philips in the Illinois action based upon the antitrust judgment for Windmere in the instant case. Pet. App. A36, A44-A45; Pet. Br. 5. The Illinois district court dismissed those counterclaims on the ground that they were compulsory counterclaims to Philips' patent infringement claims against petitioner in the Florida action and were therefore barred by petitioner's failure to raise them in that case. Pet. App. A44-A45.

settlement is consistent with considerations of fairness and public policy.

A. Voluntary settlement of disputes is strongly favored in the law, because it fosters judicial economy, economic efficiency, and the public and private interests in the just resolution of disputes. A general rule of vacatur upon settlement furthers those interests by removing disincentives to settlement in cases that are pending on appeal. Absent vacatur, settlement will be impossible to achieve in many cases, because the preclusive or precedential effects of the judgment below may be regarded as unacceptable by the losing party. That concern is particularly strong in cases involving the government and other institutional litigants, for whom the preclusive and precedential effects of an adverse judgment may be more significant than the more immediate impact of the judgment or the cost of settlement.

B. Petitioner asserts that the foregoing interests are outweighed by countervailing considerations, particularly the public and private interests supporting the doctrine of nonmutual collateral estoppel. That doctrine is inapplicable to the government, of course, and thus petitioner's argument would have no force in cases in which the government seeks vacatur of an unfavorable judgment. In any event, petitioner's argument lacks merit. Petitioner relies in part on the interests of third parties in taking advantage of the preclusive effects of judgments, but it would be unfair to place those interests above the interests of the parties to the litigation. Moreover, considerations of fairness militate strongly against giving preclusive effect to judgments that have been compromised by the agreement of the parties before being subjected to appellate review, because the correctness and justness of such judgments is called into question.

Petitioner also argues that preserving judgments in settled cases would foster judicial economy by preventing relitigation of issues. The possible future benefits of preclusion are speculative in most cases, however, and are outweighed by the immediate benefits of permitting vacatur in order to facilitate

settlements. Petitioner would apparently have the courts weigh these various factors on a case-by-case basis, but that approach would create uncertainty, thereby discouraging settlement and burdening the courts with additional decision-making obligations.

Finally, petitioner points to the precedential value of judgments. The precedential force of district court judgments is open to question, however, and in any event there is no justification for placing the precedential value of decisions ahead of the interest of the parties in resolving their dispute.

For these reasons, vacatur is generally appropriate when the parties request that disposition in a case that is rendered moot by settlement. Even if the Court were to reject that general rule in favor of a more flexible approach, we submit that a proper balancing of the relevant interests would usually lead to the conclusion that vacatur is called for.

ARGUMENT

"Federal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies." *Iron Arrow Honor Soc'y* v. *Heckler*, 464 U.S. 67, 70 (1983) (per curiam); see *Church of Scientology* v. *United States*, 113 S. Ct. 447, 449 (1993); *Deakins* v. *Monaghan*, 484 U.S. 193, 199 (1988). A corollary to that basic principle is that the parties' dispute must exist at every stage of the litigation. "It is not enough that a controversy existed at the time the complaint was filed." *Deakins* v. *Monaghan*, 484 U.S. at 199; *Sosna* v. *Iowa*, 419 U.S. 393, 402 (1975); *Steffel* v. *Thompson*, 415 U.S. 452, 459 n.10 (1974); see also *Honig* v. *Doe*, 484 U.S. 305, 329 (1988) (Rehnquist, C.J., concurring). "[A]n actual controversy must exist at all stages of appellate review." *Ibid.*; see *Lewis* v. *Continental Bank Corp.*, 494 U.S. 472, 477-478 (1990).

Under the foregoing principles, when the parties to a case enter into a settlement agreement that fully resolves their dispute, the case is rendered moot, and the federal courts are thereby deprived of jurisdiction to decide the case on the

merits.[6] If the settlement occurs while the case is pending on appeal, however, a further question arises: what effect should the settlement-induced mootness have on the judgment already entered by the district court?[7] In our view, both this Court's precedents and considerations of fairness and public policy support a general rule of vacatur of district court judgments when settlement renders a case moot while on appeal.[8]

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[6] See *Lake Coal Co.* v. *Roberts & Schaefer Co.*, 474 U.S. 120, 120 (1985) (per curiam); *Hammond Clock Co.* v. *Schiff*, 293 U.S. 529, 530 (1934) (per curiam); *United States* v. *Alaska S.S. Co.*, 253 U.S. 113, 116 (1920) ("Where by an act of the parties * * * the existing controversy has come to an end, the case becomes moot and should be treated accordingly."); *Buck's Stove & Range Co.* v. *AFL*, 219 U.S. 581, 581 (1911); *Mills* v. *Green*, 159 U.S. 651, 654 (1895); see also *Honig* v. *Doe*, 484 U.S. 305, 341 (1988) (Scalia, J., dissenting).

[7] The circuits are split on this issue. The Second and Federal Circuits have adopted general rules in favor of vacating the district court's judgment when a case is settled on appeal. See, *e.g.*, *Federal Data Corp.* v. *SMS Data Prods. Group, Inc.*, 819 F.2d 277, 279-280 (Fed. Cir. 1987); *Nestle Co.* v. *Chester's Market, Inc.*, 756 F.2d 280, 283-284 (2d Cir. 1985). Similarly, the Fourth, Eighth, Tenth, and Eleventh Circuits appear to grant vacatur when settlement renders a case moot while on appeal, although those courts have not addressed the question at length. See, *e.g.*, *Kennedy* v. *Block*, 784 F.2d 1220, 1225 (4th Cir. 1986); *Hendrickson* v. *Secretary of Health & Human Services*, 774 F.2d 1355 (8th Cir. 1985); *Studio 1712, Inc.* v. *Etna Products Co.*, 968 F.2d 10 (10th Cir. 1992); *Baxter Healthcare Corp.* v. *Healthdyne, Inc.*, 956 F.2d 226, 227 (11th Cir. 1992). The Third, Seventh, and District of Columbia Circuits, on the other hand, uniformly decline to grant vacatur upon settlement. See, *e.g.*, *Clarendon Ltd.* v. *Nu-West Industries, Inc.*, 936 F.2d 127, 128-130 (3d Cir. 1991); *In re Memorial Hospital*, 862 F.2d 1299, 1301-1303 (7th Cir. 1988); *In re United States*, 927 F.2d 626, 627-628 (D.C. Cir. 1991). Finally, the Ninth Circuit employs a balancing approach, under which the propriety of vacatur depends upon the relative weight of the public and private interests at stake in a particular case. *National-Union Fire Ins. Co.* v. *Seafirst Corp.*, 891 F.2d 762, 765-769 (9th Cir. 1989); *Ringsby Truck Lines, Inc.* v. *Western Conference of Teamsters*, 686 F.2d 720, 721-722 (9th Cir. 1982).

[8] Respondents assert (Jt. Br. in Opp. 4-5) that petitioner is not in a position to challenge the court of appeals' decision because petitioner was not a party below and lacks standing to oppose vacatur of the district court's judgment. We express no opinion on that question. We assume for the sake of our submission, however, that petitioner's claims are properly before the Court. See generally R. Stern, E. Gressman, & S. Shapiro, *Supreme Court Practice* 46-47, 338-340 (6th ed. 1986); *United Airlines, Inc.* v. *McDonald*, 432 U.S. 385 (1977).

I. THIS COURT'S PRECEDENTS MANDATE A GENERAL RULE OF VACATUR WHEN A CASE THAT IS PENDING ON APPEAL BECOMES MOOT AS A RESULT OF A SETTLEMENT AGREEMENT THAT CONTEMPLATES VACATUR

In *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950), this Court stated that "[t]he established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." 340 U.S. at 39. In keeping with that "established practice," the Court has repeatedly emphasized that "[w]here it appears upon appeal that the controversy has become entirely moot, it is the duty of the appellate court to set aside the decree below and to remand the cause with directions to dismiss." *Great Western Sugar Co.* v. *Nelson*, 442 U.S. 92, 93 (1979) (per curiam); *Duke Power Co.* v. *Greenwood County*, 299 U.S. 259, 267 (1936).

Since *Munsingwear* was decided in 1950, this Court appears to have consistently followed the *Munsingwear* procedure in cases that became moot as a result of settlement while pending before the Court. See, *e.g.*, *Continental Casualty Co.* v. *Fibreboard Corp.*, 113 S. Ct. 399 (1992) (see Jt. Br. in Opp. App. B1-B3); *City Gas Co.* v. *Consolidated Gas Co.*, 111 S. Ct. 1300 (1991) (citing *Munsingwear*) (see Jt. Br. in Opp. App. C1-C4); *Lake Coal Co.* v. *Roberts & Schaefer Co.*, 474 U.S. 120 (1985) (per curiam); *J. Aron & Co.* v. *Mississippi Shipping Co.*, 361 U.S. 115 (1959) (per curiam); *Black* v. *Amen*, 355 U.S. 600 (1958) (per curiam); see also *Stewart* v. *Southern Ry.*, 315 U.S. 784 (1942); *Hammond Clock Co.* v.

Schiff, 293 U.S. 529, 530 (1934) (per curiam).[9] Thus, while the Court has not explained its reasoning in great detail, its past practice supports the conclusion that *Munsingwear* is fully applicable in the settlement context, and that vacatur of the district court's judgment is generally required when the parties seek that result after a case is settled while on appeal.[10]

Munsingwear itself, of course, did not involve mootness resulting from settlement. In *Munsingwear*, the government had previously brought suit to enjoin violations of certain commodity price control regulations. The district court

[9] This consistent practice has been noted by commentators. See, *e.g.*, Greenbaum, *Mootness on Appeal in Federal Courts: A Reexamination of the Consequences of Appellate Disposition*, 17 U.C. Davis L. Rev. 7, 39 & n.144 (1983); Note, *Collateral Estoppel Effects of Judgments Vacated Pursuant to Settlement*, 1987 U. Ill. L. Rev. 731, 749 (1987) [hereafter *Collateral Estoppel Effects*]. But cf. *Buck's Stove & Range Co.* v. *AFL*, 219 U.S. 581 (1911); *Dakota County* v. *Glidden*, 113 U.S. 222 (1885).

[10] Vacatur is not required when the parties' settlement agreement merely contemplates dismissal of the case pursuant to this Court's Rule 46.1. In that circumstance, the parties have in effect decided to be bound by the judgment below, and thus the case is no different from one in which the losing party simply decides not to seek review in this Court. See, *e.g.*, *St. Luke's Fed'n of Nurses & Health Professionals* v. *Presbyterian/St. Luke's Medical Center*, 459 U.S. 1025 (1982) (dismissing case pursuant to parties' stipulation). For the same reason, vacatur should not be available when the losing party in the district court simply declines to appeal or unilaterally withdraws its appeal. In such instances, the case is certainly over, but it is not "moot"; to the contrary, the judgment is understood by the parties to have continuing legal effect in the sense that it defines their legal relationship and obligations with respect to the subject matter of the lawsuit. Where the judgment awards the plaintiff damages in a specified amount and the parties settle for a lesser amount without moving to have the judgment vacated, the parties have, in effect, accepted the judgment as a proper resolution of their underlying dispute and settled the plaintiff's distinct claim based on that judgment. Where the parties move to have the judgment vacated, on the other hand, they do not accept the judgment as a proper resolution of their underlying dispute, and the settlement therefore is of the plaintiff's claim in that dispute, rather than of the plaintiff's claim on the judgment.

entered judgment against the government. While the government's appeal was pending, the commodity at issue was decontrolled. The defendant then moved to dismiss the government's appeal as moot, and the court of appeals granted that motion. 340 U.S. at 37. In rejecting the government's subsequent attempt to avoid the res judicata effects of the district court's prior judgment, the Court observed that the government, through "orderly procedure," could have "prevent[ed] [the] judgment, unreviewable because of mootness, from spawning any legal consequences" merely by asking that the district court's judgment be vacated as moot, rather than acquiescing in the dismissal of its appeal. *Id.* at 40-41. As the Court explained, "[t]hat procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance. When that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision which in the statutory scheme was only preliminary." *Id.* at 40.

Because *Munsingwear* itself involved mootness by "happenstance," petitioner contends (Br. 20-23) that the *Munsingwear* procedure should be limited to that context and should no longer be followed when mootness results instead from the actions of the parties themselves.[11] In support of that contention, petitioner points (Br. 21-22) to *Karcher* v. *May*, 484 U.S. 72, 82-83 (1987), in which former state legislative officials, purporting to act on behalf of the legislature, attempted to take an appeal to this Court from a lower court's judgment invalidating a state statute. While the case was pending in this Court, the appellants' successors in office withdrew the appeal. The Court rejected the appellants'

[11] Some courts of appeals have adopted that approach, reasoning that *Munsingwear* applies only when a case has become moot for reasons wholly beyond the control of the appellant. See, *e.g.*, *In re United States*, 927 F.2d at 627-628; *National Union Fire Ins. Co.* v. *Seafirst Corp.*, 891 F.2d at 766; *In re Memorial Hospital*, 862 F.2d at 1301; *Ringsby Truck Lines, Inc.* v. *Western Conference of Teamsters*, 686 F.2d at 721.

request to vacate the judgment below under *Munsingwear*, explaining (484 U.S. at 83):

> This controversy did not become moot due to circumstances unattributable to any of the parties. The controversy ended when the losing party—the [state] Legislature—declined to pursue its appeal. Accordingly, the *Munsingwear* procedure is inapplicable to this case.

Contrary to petitioner's contention, *Karcher* does not render *Munsingwear* inapplicable when mootness results from the mutual agreement of the parties. The dispute in *Karcher* did not become moot by reason of the withdrawal of the appeal, any more than any case becomes moot when the losing party decides to forgo further review of the judgment; rather, the case simply ended when the judgment of the lower court was rendered final and unreviewable. See *Long Island Lighting Co.* v. *Cuomo*, 888 F.2d 230, 233 & 234 n.4 (2d Cir. 1989). *Karcher* thus was not a case of mootness at all, and *Munsingwear* was therefore inapplicable on its own terms.

This reading of *Karcher* is confirmed by a series of decisions, both before and after *Karcher*, in which this Court has applied *Munsingwear* to cases that became moot as a result of the parties' conduct. Thus, in *Deakins* v. *Monaghan*, 484 U.S. 193, 199-200 (1988), the respondents (the plaintiffs in the district court) chose to withdraw their claims while the case was pending before this Court. Applying *Munsingwear*, the Court vacated the judgment below and remanded with directions to dismiss. 484 U.S. at 200. Similarly, in *Frank* v. *Minnesota Newspaper Ass'n*, 490 U.S. 225 (1989) (per curiam), the defendants-appellants changed their position, and the plaintiff-appellee accordingly "state[d] its willingness to forgo any further claim to the * * * relief sought in its complaint." *Id.* at 227. Concluding that the case was moot, the Court vacated and remanded with directions to dismiss. *Ibid.* (citing *Munsingwear*). See also *Webster* v. *Reproductive Health Services*, 492 U.S. 490, 512-513 (1989); *A.L. Mechling Barge Lines, Inc.* v. *United States*, 368 U.S. 324, 329 (1961); cf. *Gray* v. *Board of Trustees*, 342 U.S. 517, 518 (1952) (per curiam); *Commercial Cable Co.* v. *Burleson*, 250 U.S. 360, 362 (1919).[12]

As these decisions demonstrate, petitioner errs in contending that *Munsingwear* is inapplicable outside the context of mootness resulting from happenstance. On numerous occasions, the Court has made clear that vacatur is the appropriate response when mootness results from the agreement of the parties or from the unilateral conduct of the party that prevailed below. That result is eminently sound within the broader framework of the mootness doctrine. In a case such as *Munsingwear*, the fact that the case was rendered moot by "happenstance"—*i.e.*, by factors extrinsic to the case or beyond the control of the parties—explains why the lower court judgment should be vacated on the motion of just one of the parties (the losing party below, who has been prevented from obtaining appellate review), even if the prevailing party below might oppose vacatur. But where *all* parties to a particular claim—the only parties immediately

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[12] In each of the cases cited in the text, the party who had *prevailed* below engaged in some form of unilateral conduct that had the effect of rendering the case before the Court moot. In those circumstances, as in the case of settlement, we agree that the *Munsingwear* procedure is applicable. On occasion, however, the Court appears to have followed a similar approach when the party who *lost* in the court below acted unilaterally to moot the controversy while the case was pending before the Court. See, *e.g.*, *Weinstein* v. *Bradford*, 423 U.S. 147, 149 (1975) (per curiam); *Preiser* v. *Newkirk*, 422 U.S. 395, 403-404 (1975); *Board of Regents* v. *New Left Education Project*, 414 U.S. 807 (1973). In our view, absent unusual circumstances—such as when the losing party complies involuntarily with a preliminary injunction, *Honig* v. *Students of Cal. School for the Blind*, 471 U.S. 148 (1985), or when a legislative enactment resolves the immediate controversy, *Board of Regents* v. *New Left Education Project*, *supra*; *Bowen* v. *Kizer*, 485 U.S. 386 (1988)—the losing party below should not be able to obtain vacatur of an unfavorable judgment in an injunctive action through unilateral action, such as by voluntarily ceasing the allegedly illegal conduct that is the subject of the suit or by otherwise complying with the judgment. See also note 13, *infra*. This case, of course, presents no occasion to address that question, because respondents' dispute did not become moot through the unilateral action of Philips.

affected by the judgment on that claim—move to have the judgment vacated, there is no reason for the court to look to matters external to the case to determine whether vacatur is proper. Moreover, if, as we have shown (see pp. 12-13, *supra*), the unilateral action of the prevailing party below may render a case moot and properly lead to vacatur of the judgment below, there is no basis in the mootness doctrine for a court to deny vacatur when the prevailing party joins in the losing party's motion for vacatur as part of the settlement of their dispute. Accordingly, the court of appeals did not err in granting respondents' joint motion to vacate the judgment of the district court after respondents settled their differences.

II. CONSIDERATIONS OF FAIRNESS AND PUBLIC POLICY ALSO SUPPORT A GENERAL RULE OF VACATUR IN CASES THAT BECOME MOOT AS A RESULT OF SETTLEMENT WHILE PENDING ON APPEAL

Petitioner contends (Br. 24-35) that considerations of judicial economy and finality, and the interests of non-parties, require reexamination of the Court's practice of vacating the judgment below and remanding for dismissal when a pending case is rendered moot by voluntary settlement. In our view, however, that established practice strikes the proper balance between the factors identified by petitioner and the strong considerations of policy and fairness supporting the Court's consistent approach in this area.[13]

[13] Our discussion of the propriety of vacatur is limited to those cases in which the settlement agreement actually renders a particular claim moot by achieving a complete resolution of that claim between all of the parties involved. Obviously, if some parties to the claim have not agreed to the settlement, or if the judgment is intended to have some continuing legal effect as a statement of the binding disposition of the underlying claim, the judgment itself is not "moot," and vacatur is inappropriate. Cf. *Coopers & Lybrand* v. *Livesay*, 437 U.S. 463, 465 n.3 (1978) (case not rendered moot by "tentative" settlement agreement); see also notes 26, 27, *infra*. Similarly, the case is not moot, and *Munsingwear* is therefore inapplicable, if the defendant chooses to comply with the judgment but there is a reasonable

A. 1. The voluntary resolution of legal disputes is strongly favored in the law, because it serves the interests of plaintiffs and defendants as well as important public interests. *Marek* v. *Chesny*, 473 U.S. 1, 10 (1985); *Williams* v. *First National Bank*, 216 U.S. 582, 595 (1910); Note, *Avoiding Issue Preclusion By Settlement Conditioned Upon The Vacatur Of Entered Judgments*, 96 Yale L.J. 860, 866 n.41 (1987) [hereafter *Avoiding Issue Preclusion*]; Note, *Settlement Pending Appeal: An Argument For Vacatur*, 58 Fordham L. Rev. 233, 236 & nn.18 & 21, 242 (1989) (collecting authorities) [hereafter *Settlement Pending Appeal*]. First, settlement serves the interests of judicial economy and efficiency by eliminating the necessity for further judicial consideration of the merits of the settled case. See, *e.g.*, *Federal Data Corp* v. *SMS Data Prods. Group, Inc.*, 819 F.2d 277, 280 (Fed. Cir. 1987) (precluding vacatur "is wasteful of the resources of the judiciary" to the extent it prevents settlement); *Avoiding Issue Preclusion*, 96 Yale L.J. at 867. Settlement on appeal may have little direct impact on the congested dockets of the federal district courts (although it does eliminate the potential for time-consuming remands in settled cases); but the courts of appeals are also overburdened, and voluntary resolution of cases pending on appeal is of obvious benefit to those courts—and ultimately to this Court, through the elimination of additional candidates for its certiorari docket.

Second, settlement promotes economic efficiency by capping litigation costs and permitting the parties to devote their resources and attention to more productive conduct. See *Settlement Pending Appeal*, 58 Fordham L. Rev. at 239. In addition, settlement serves both public and private interests in the just resolution of disputes: "One of the fundamental principles of judicial administration is that, in most cases, the absolute result of a trial is not as high a quality of justice as

expectation that the dispute may arise again in the future. See *Deakins* v. *Monaghan*, 484 U.S. at 200-201 n.4; *United States* v. *W.T. Grant Co.*, 345 U.S. 629, 632-633 (1953).

is the freely negotiated, give a little, take a little settlement." Will, Merhige & Rubin, *The Role of the Judge in the Settlement Process*, 75 F.R.D. 203, 203 (1976); see *Chemetron Corp.* v. *Business Funds, Inc.*, 682 F.2d 1149, 1202 n.5 (5th Cir. 1982) (Reavley, J., dissenting), vacated in part, 460 U.S. 1007, cert. denied, 460 U.S. 1013 (1983); *Settlement Pending Appeal*, 58 Fordham L. Rev. at 236.

2. A general rule of vacatur upon settlement eliminates disincentives to settlement on appeal, thus furthering those important interests.[14] Settlement on appeal would often be difficult or impossible to achieve if the parties were foreclosed from securing vacatur of the lower court's judgment in order to effectuate their settlement. The losing party might have a strong interest in avoiding the preclusive effect of the judgment below[15] or in lessening the precedential force of the lower court's ruling,[16] and that party therefore might be

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[14] See *Nestle Co.* v. *Chester's Market, Inc.*, 756 F.2d 280, 282 (2d Cir. 1985); *Long Island Lighting Co.* v. *Cuomo*, 888 F.2d 230, 234 n.4 (2d Cir. 1989); *Settlement Pending Appeal*, 58 Fordham L. Rev. at 242-243; Greenbaum, *supra*, 17 U.C. Davis L. Rev. at 36-37.

[15] The general rule is that a vacated judgment has no collateral estoppel or res judicata effect. See *United States* v. *Munsingwear, Inc.*, 340 U.S. at 39-40; *Pontarelli Limousine, Inc.* v. *Chicago*, 929 F.2d 339, 340 (7th Cir. 1991); *Savidge* v. *Fincannon*, 836 F.2d 898, 906 & n.33 (5th Cir. 1988); *No East-West Highway Comm., Inc.* v. *Chandler*, 767 F.2d 21, 24 (1st Cir. 1985); *Dodrill* v. *Ludt*, 764 F.2d 442, 444 (6th Cir. 1985); *Quarles* v. *Sager*, 687 F.2d 344, 346 (11th Cir. 1982); *Hill* v. *Western Electric Co.*, 672 F.2d 381, 387-389 (4th Cir.), cert. denied, 459 U.S. 981 (1982). But see *Bates* v. *Union Oil Co.*, 944 F.2d 647 (9th Cir. 1991), cert. denied, 112 S. Ct. 1761 (1992); *Chemetron Corp.* v. *Business Funds, Inc.*, 682 F.2d at 1187-1192.

[16] Most courts that have considered the question have concluded that vacatur also deprives the lower court's judgment of its precedential effect. See, *e.g.*, *County of Los Angeles* v. *Davis*, 440 U.S. 625, 634 n.6 (1979); *Martinez* v. *Winner*, 800 F.2d 230, 231 (10th Cir. 1986); *DHL Corp.* v. *Civil Aeronautics Bd.*, 659 F.2d 941, 944 n.4 (9th Cir. 1981); *Marshall* v. *Whittaker Corp., Berwick Forge & Fabricating Co.*, 610 F.2d 1141, 1145 (3d Cir. 1979); see generally Greenbaum, *supra*, 17 U.C. Davis L. Rev. at 95 n.399 (collecting authorities). But see *United States* v. *Articles of Drug*, 818 F.2d 569, 572 (7th Cir. 1987). Of course, vacated decisions may still have persua-

unwilling to forgo further appellate review if vacatur is unavailable. That concern is particularly strong in cases involving the government and other institutional litigants, which are often more interested in the precedential effect of the lower court decision than in the details of the particular case. See Greenbaum, *supra*, 17 U.C. Davis L. Rev. at 35 n.130. Thus, a general rule of vacatur when cases become moot through settlement encourages voluntary resolution of disputes.[17]

In contrast, denying vacatur when parties settle cases that are pending on appeal would undoubtedly lead to additional litigation: some parties, even if they could reach mutually

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sive value based on the force of the analysis employed by the court. See *County of Los Angeles* v. *Davis*, 440 U.S. at 646 n.10 (Powell, J., dissenting); Greenbaum, *supra*, 17 U.C. Davis L. Rev. at 100 & n.417.

[17] Petitioner and its amicus Trial Lawyers for Public Justice express concern (Pet. Br. 32; Trial Lawyers Br. 8) that the practice of granting vacatur when cases settle on appeal will encourage parties to delay settlement until after trial, secure in the knowledge that vacatur will be available in the event of an unfavorable judgment. See also Fisch, *Rewriting History: The Propriety Of Eradicating Prior Decisional Law Through Settlement And Vacatur*, 76 Cornell L. Rev. 589, 632-642 (1991). In our view, that concern is greatly overstated. The cases in which parties are most likely to view vacatur as potentially valuable are those "in which the legal or factual issues are sufficiently complex that it is difficult to predict the outcome of the litigation." *Id.* at 637 n.239. It is in precisely such cases, however, that "[a] pretrial settlement at a value both parties view as reasonable may be impossible to achieve, given the substantial differences in the parties' expectations of the litigation outcome." *Ibid.*; see also Schuck, *The Role of Judges in Settling Complex Cases: The Agent Orange Example*, 53 U. Chi. L. Rev. 337, 339-340 (1986); Priest & Klein, *The Selection of Disputes for Litigation*, 13 J. Legal Stud. 1, 14-16 (1984). Moreover, petitioner's and amicus's argument ignores the very real costs imposed on parties who choose to litigate unsuccessfully rather than settle before judgment is entered by the district court. Litigation is extremely expensive; unfavorable judgments often result in damaging publicity that cannot be eliminated by subsequent vacatur; and the entry of an unfavorable judgment tends to increase dramatically the price of settlement for the losing party by significantly lessening that party's chances of eventual success in the courts.

agreeable settlement terms, would be unable to resolve their dispute voluntarily because of continuing concerns about the effects of the outstanding district court ruling. Indeed, in those circuits that refuse to permit vacatur upon settlement, there is simply "no answer that will satisfy" a litigant who is unable to consummate an otherwise satisfactory settlement because of the unavailability of vacatur. See *In re Memorial Hospital*, 862 F.2d at 1303.[18] In short, to deny litigants the ability to settle cases by obtaining vacatur would frustrate important interests in fairness and judicial economy.[19]

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[18] As one leading treatise observes, "[i]t is particularly daunting to contemplate that even after the parties have preferred to surrender the opportunity for appellate review as a matter of right in order to achieve the certainty and economy of settlement, they can do so [in those courts that forbid vacatur on settlement] only if they are willing to submit to nonmutual issue preclusion in litigation with nonparties." 13A C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3533.10, at 290 (Supp. 1993). In an attempt to respond to that concern, the Seventh Circuit has suggested that "[i]f parties want to avoid stare decisis and preclusive effects, they need only settle before the district court renders a decision, an outcome our approach encourages." *In re Memorial Hospital*, 862 F.2d at 1302. As explained above (see note 17, *supra*), however, that result is often impracticable, particularly in public or complex litigation, in which the legal and factual issues may be novel and difficult to evaluate at an early stage.

[19] This case, of course, involves the question of vacatur as a result of settlement while the case is pending before the court of appeals, and our submission is therefore limited to that question. Some commentators argue, and we agree, that different considerations should apply when a case becomes moot while a petition for certiorari is pending before this Court but has not yet been granted, because whether to grant review on any issue (including mootness) is purely discretionary with the Court. See, *e.g.*, Note, *Collateral Estoppel and Supreme Court Disposition of Moot Cases*, 78 Mich. L. Rev. 946, 953-958 (1980); see also 77-900 U.S. Br. in Opp. at 5-8, *Velsicol Chemical Corp.* v. *United States*, 435 U.S. 942 (1978) (arguing that Court should simply deny certiorari in moot cases that would not have warranted review on the merits); *Clarke* v. *United States*, 915 F.2d 699, 713-715 (D.C. Cir. 1990) (en banc) (Edwards, J., dissenting). But cf. Greenbaum, *supra*, 17 U.C. Davis L. Rev. at 43-48.

B. Despite the foregoing considerations, petitioner and its amici assert (Pet. Br. 24-35; Trial Lawyers Br. 2-14; Sears Amicus Br. 4-10) that the court of appeals erred in adopting a general rule of vacatur in cases that settle while pending on appeal. They rely principally on the public and private interests in the finality of judicial decisions, especially as embodied in the doctrine of nonmutual collateral estoppel. As this Court has recognized, nonmutual collateral estoppel serves "the dual purpose of protecting litigants from the burden of relitigating" issues previously litigated by an opposing party and of "promoting judicial economy by preventing needless litigation." *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 326 (1979); see *Blonder-Tongue Laboratories, Inc.* v. *University of Illinois Foundation*, 402 U.S. 313, 328-329 (1971). In petitioner's view, those interests outweigh the benefits of a general rule of vacatur.

Before addressing the merits of petitioner's argument, we note that the doctrine of nonmutual collateral estoppel is inapplicable to the federal government. *United States* v. *Mendoza*, 464 U.S. 154 (1984). Thus, even if petitioner's argument had some validity in the context of litigation between private parties, it would have no force in cases in which the federal government seeks vacatur of an adverse lower court judgment as part of a settlement agreement. In such cases, third parties would not be entitled to make preclusive use of the district court's judgment even absent vacatur, so the government's interest in obtaining vacatur could never be outweighed by finality concerns.

In any event, the concerns identified by petitioner and its amici do not justify a departure from the Court's past adherence to the *Munsingwear* procedure in cases that become moot by virtue of settlement. In the first place, the core purpose of finality is to ensure that the parties themselves can rely on a judgment that has become final in the district court or on appeal as a definitive resolution of their dispute. *Montana* v. *United States*, 440 U.S. 147, 153 (1979). Nothing in that core purpose suggests that the parties themselves should

be barred from jointly obtaining vacatur of a judgment *before* it has become final, in order to implement a settlement as the definitive resolution of their dispute. Moreover, as this Court's decision in *United States* v. *Mendoza* indicates, the interests favoring application of nonmutual collateral estoppel are not absolute and must give way to countervailing considerations in appropriate circumstances. See 464 U.S. at 163. In our view, the voluntary settlement of cases while pending on appeal is one such circumstance.

1. Petitioner first contends (Br. 27-30) that vacatur is inappropriate because petitioner's interest in preserving the preclusive effect of the district court's judgment outweighs Philips' interest in obtaining vacatur of that judgment. In effect, petitioner argues that the interests of *non*-parties to the litigation should be given greater weight than the interests of the parties themselves. In many cases, the unavailability of vacatur would force parties to expend additional time, effort, and money in prolonging a dispute they would prefer to resolve. We can discern no basis in law or policy for placing the interests of (often free-riding) third parties above the interests of the litigants themselves. See *Nestle*, 756 F.2d at 282-284; *Federal Data Corp.*, 819 F.2d at 279-280; 13A C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3533.10, at 432 (2d ed. 1984); *Collateral Estoppel Effects*, 1987 U. Ill. L. Rev. at 752.[20]

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[20] In this case, petitioner paid Windmere's litigation expenses, and it argues (Br. 28-29) that vacatur improperly denies it the benefit of those expenditures. Petitioner, however, was not a party to Philips' unfair competition claim against Windmere, and it chose not to intervene in the litigation of that claim. Moreover, petitioner paid Windmere's litigation expenses because it was obligated to do so as part of the agreement under which Windmere distributed petitioner's shavers. Petitioner's payment of litigation expenses is a contractual matter between it and Windmere; the mere payment of expenses gives petitioner no special right to have a district court judgment preserved over the objection of the parties. If it was important to petitioner to preserve the effect of a judgment in favor of one of its distributors because of the potential preclusive effect of that judgment in suits against other distributors, petitioner could have included a provision in its agreement with Windmere and other distributors that required petitioner's consent to any settlement that would result in vacatur. There is no reason that the established rule of vacatur should be modified to accord petitioner a benefit that it chose not to (or was unable to) secure by contract.

What is more, the settlement was not without its advantages for petitioner. If Philips' appeal had gone forward, petitioner would have been required to pay the additional litigation costs incurred by Windmere, and it is possible that the judgment in Windmere's favor on the unfair competition claim would have been set aside and that Windmere ultimately would have lost on that claim. Petitioner would then have been obligated to indemnify Windmere for any judgment entered against it. See Pet. App. A11-A12. In addition, that adverse judgment presumably would have had a preclusive effect on petitioner (and those in privity with it) in other litigation. See Restatement (Second) of Judgments § 39 (1982); *Montana* v. *United States*, 440 U.S. at 154-155. For these reasons, if vacatur were denied because of petitioner's objection, petitioner would stand to gain from the settlement while giving up nothing.

Moreover, the justification for applying nonmutual collateral estoppel is particularly weak, and the countervailing concerns of fairness are heightened, when the judgment at issue was rendered unreviewable on appeal as a result of the original parties' settlement. As this Court has observed, "[t]he estoppel doctrine * * * is premised upon an underlying confidence that the result achieved in the initial litigation was substantially correct. In the absence of appellate review * * * such confidence is often unwarranted." *Standefer* v. *United States*, 447 U.S. 10, 23 n.18 (1980); see also 13A C. Wright, A. Miller & E. Cooper, *supra*, § 3533.10, at 289 n.22 (Supp. 1993) ("Nonmutual preclusion, always a risky matter, is even riskier when it rests on findings that were not open to the appellate review that is built into our adversary system and that has shaped the nature of trial courts and procedures."). Indeed, one reason for the approach reflected in *Munsingwear* is the Court's recognition of the need to prevent "a decision which in the statutory scheme was only preliminary" from "spawning any legal consequences." 340 U.S. at 40-41.

To be sure, despite the additional assurances of correctness provided by appellate review,[21] the failure by the losing party to seek such review has not generally been deemed a sufficient justification for denying preclusive effect to a district court judgment. See *Munsingwear*, 340 U.S. at 39. That result makes considerable sense when the parties decline to take an appeal, because their willingness to be bound by the judgment provides some assurance that it reflects a just resolution of their dispute.

The situation is much different, however, when one or more parties appeal, the case is then settled while pending on appeal, and the parties seek vacatur of the district court's judgment. In that circumstance, the parties are *not* willing to be bound by the district court's judgment, but have instead reached their own, often quite different, resolution of their dispute—a resolution that, from the combined perspective of the parties, is more just than the judgment they seek to have vacated. By their very nature, settlement agreements are based on compromise: each party typically contributes to the settlement by retreating from its litigating position to some extent, often because of perceived weaknesses in its case and uncertainty about its chances of ultimate success, as well as the costs of further litigation. The premises underlying the doctrine of nonmutual collateral estoppel therefore weigh against a rule that would require the courts to give full preclusive effect to a judgment that was compromised on appeal, because the prevailing party's willingness to forgo the judgment in its favor and the losing party's unwillingness to be bound by that judgment suggest that full confidence in the correctness and justness of the unreviewed judgment is unwarranted.[22]

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21 See, *e.g.*, Greenbaum, *supra*, 17 U.C. Davis L. Rev. at 17; see also Note, *Collateral Estoppel and Supreme Court Disposition of Moot Cases*, 78 Mich. L. Rev. 946, 954 (1980).

22 For essentially the same reason, it is well established that application of collateral estoppel is inappropriate when the prior judgment appears to have been the product of a compromise verdict. See Restatement (Second) of Judgments § 29(5) (1982). If "the circumstances * * * suggest that the issue was resolved by compromise[,] * * * taking the prior determination at face value for purposes of the second action would extend the effects of imperfections in the adjudicative process beyond the limits of the first adjudication, within which they are accepted only because of the practical necessity of achieving finality." *Id.* § 29, comment g, at 295; see also *id.* illus. 7.

2. Petitioner also asserts (Br. 31-33) that a general rule of vacatur undermines the interest in judicial efficiency by forcing the federal courts to adjudicate issues that were previously resolved in another case. As noted above (pp. 16-18, *supra*), however, denying vacatur to parties who settle on appeal would discourage settlement, thereby disserving the very interests in judicial economy that the preclusion doctrines are designed to foster. See *Nestle*, 756 F.2d at 282. For that reason, and because the underlying justification for applying collateral estoppel is diminished in this context in any event, vacatur should not be barred on the ground urged by petitioner. Cf. *United States* v. *Mendoza*, 464 U.S. at 163 (declining to apply nonmutual collateral estoppel against the United States because "a contrary result might disserve the economy interests in whose name estoppel is advanced" by causing the government to appeal when it would otherwise not do so).

Moreover, while in this case it is clear that the district court's judgment would have been given actual preclusive effect in the Illinois litigation absent vacatur, in most cases the possibility of such future preclusive use is entirely speculative. As a general rule, then, vacatur furthers the immediate and concrete interests of the parties and the courts while potentially undermining only the more remote and hypothetical interests of future litigants and courts. See *Nestle*, 756 F.2d at 284; *Settlement Pending Appeal*, 58 Fordham L. Rev. at 239-240; Greenbaum, *supra*, 17 U.C. Davis

L. Rev. at 38; *Collateral Estoppel Effects*, 1987 U. Ill. L. Rev. at 753.[23]

Petitioner nevertheless would apparently have the courts weigh the relative interests of the parties and others in light of the particular circumstances of each case in order to determine whether vacatur is appropriate—although tellingly, petitioner does not propose any concrete standards for measuring and balancing the respective interests of parties, non-parties, and the public. Br. 24, 26, 35. That approach would not promote either judicial economy or fairness, because its very unpredictability would discourage settlement and create actual or perceived inequities. Various Members of this Court have noted the problems created by the indeterminate nature of balancing tests, including their unpredictability and inconsistency in result. See, *e.g.*, *Pioneer Invest. Servs. Co.* v. *Brunswick Assocs. Ltd. Partnership*, 113 S. Ct. 1489, 1503 (1993) (O'Connor, J., joined by Scalia, Souter, and Thomas, JJ., dissenting) ("Reasonable minds often differ greatly on what the equities require."); *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532, 562-563 (1985) (Rehnquist, J., dissenting); see also *Solorio* v. *United States*, 483 U.S. 435, 448-451 (1987) (jurisdictional balancing test overruled as "confusing and difficult" to apply). This concern is particularly weighty for the federal government, which must consider a variety of factors in determining whether to settle or continue litigating any particular lawsuit and which relies heavily on predictability of outcome in making those decisions. See *United States* v. *Mendoza*, 464 U.S. at 161-162.

An ad hoc balancing test would also impose undue burdens on the courts. Under petitioner's proposed approach, the

[23] The concern for judicial economy is particularly misplaced when the judgment at issue (like the antitrust judgment involved in this case) could give rise to *offensive* collateral estoppel in a subsequent case. As this Court noted in *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 329 (1979), offensive collateral estoppel "does not promote judicial economy in the same manner as defensive use does."

courts would be required to analyze and weigh a variety of conflicting factors in determining whether vacatur was appropriate each time it was sought in connection with a settlement. In most cases, moreover, the courts would be required to make that determination without the assistance of an adversary presentation to frame the relevant issues. For that reason as well, the bright-line approach reflected in *Munsingwear* should continue to govern in cases of this type.[24]

3. Finally, petitioner and one of its amici contend (Pet. Br. 33-34; Trial Lawyers Br. 5-7, 9-11) that vacatur of district court judgments should be disfavored because vacatur undermines the public interest in precedent and the development of the law and improperly permits judicial decisions to become mere bargaining chips between the parties. See also *Clarendon Ltd.* v. *Nu-West Industries, Inc.*, 936 F.2d at 129; *In re United States*, 927 F.2d at 628; *In re Memorial Hospital*, 862 F.2d at 1302-1303. That contention is unpersuasive.

In the first place, the actual precedential value of district court decisions is debatable. See, *e.g.*, *United States* v. *Articles of Drug*, 818 F.2d 569, 572 (7th Cir. 1987) (noting that "a single district court decision * * * has little precedential effect. It is not binding on the circuit, or even on other district judges in the same district"); *Fox* v. *Acadia State*

[24] In *Cardinal Chemical Co.* v. *Morton Int'l, Inc.*, No. 92-114 (May 17, 1993), slip op. 16, this Court recently reemphasized the particularly "strong public interest in the finality of judgments in patent litigation." See *id.* at 17 (discussing "the danger that the opportunity to relitigate [questions of patent invalidity] might, as a practical matter, grant monopoly privileges to the holders of invalid patents"). *Cardinal Chemical* does not shed light on the resolution of the issue in this case, of course, because it did not involve the question of the proper disposition of a case that became moot while pending on appeal. See *id.* at 11-15 (finding that claim of patent invalidity was *not* rendered moot by court of appeals' finding of no infringement). In any event, even if the unique public interest implicated in judgments of patent invalidity were sufficiently strong to justify denial of vacatur when such cases settle on appeal, a general rule of vacatur would still be appropriate in cases that did not involve such issues.

Bank, 937 F.2d 1566, 1570 (11th Cir. 1991). District judges do appear to give substantial weight to other district court rulings, however, especially in cases arising in the same judicial district.[25] Furthermore, the government's experience suggests that one district judge's ruling on a novel issue, even if erroneous, will frequently be followed by other district judges, thus necessitating numerous appeals. We therefore agree with petitioner's argument to the extent that it ascribes some precedential weight—in practice if not in theory—to district court decisions.

We do not agree, however, with petitioner's conclusion that whatever precedential value unreviewed (and unreviewable) district court decisions may have militates against a general rule of vacatur.[26] In the first place, as noted above (see pp. 21-22, *supra*), the validity of an unreviewed district court

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[25] See, *e.g.*, *Hutchinson* v. *Cox*, 784 F. Supp. 1339, 1342 (S.D. Ohio 1992); *FDIC* v. *Cherry, Bekaert & Holland*, 129 F.R.D. 188, 193 n.5 (M.D. Fla. 1989); *Bento* v. *I.T.O. Corp.*, 599 F. Supp. 731, 740 n.9 (D.R.I. 1984); *Fricker* v. *Town of Foster*, 596 F. Supp. 1353, 1356 (D.R.I. 1984); *United States* v. *Anaya*, 509 F. Supp. 289, 293 (S.D. Fla. 1980) (en banc), aff'd, 685 F.2d 1272 (11th Cir. 1982).

[26] This case, of course, involves only the propriety of vacatur of district court judgments in cases that are rendered moot by settlement while pending before the court of appeals. Different considerations are present with respect to decisions of administrative agencies. Thus, although the Court has held that *Munsingwear* applies to agency adjudications that become moot while judicial review is pending, see *A.L. Mechling Barge Lines* v. *United States*, 368 U.S. 324, 329 (1961), we believe a different result is called for when the private parties affected by an agency regulatory ruling settle their differences and seek to have the agency's ruling vacated. In that setting, the agency itself is generally a party to the litigation as well, and it in any event has a legitimate regulatory interest in the preservation of its ruling, particularly to the extent that the ruling announces law to guide the conduct of third parties not presently before the court. Moreover, agencies are not constrained by the case-or-controversy requirement of Article III, so the mootness concerns underlying the *Munsingwear* doctrine have less force in that context. See generally *Radiofone, Inc.* v. *FCC*, 759 F.2d 936, 940-941 (D.C. Cir. 1985) (opinion of Scalia, J.); Greenbaum, *supra*, 17 U.C. Davis L. Rev. at 54-64.

decision that has been compromised on appeal is open to question. Moreover, petitioner's argument exalts the broader precedential value it ascribes to the district court's decision over the court's central role in resolving concrete disputes between parties. "[T]he purpose for which civil courts have been established" is "the conclusive resolution of disputes within their jurisdictions," *Montana* v. *United States*, 440 U.S. at 153, and "[i]n all civil litigation, the judicial decree is not the end but the means." *Hewitt* v. *Helms*, 482 U.S. 755, 761 (1987). Thus, "litigation exists to resolve the parties' genuine grievances; opinions are byproducts." *Bethune Plaza, Inc.* v. *Lumpkin*, 863 F.2d 525, 531 (7th Cir. 1988); see *Alliance To End Repression* v. *Chicago*, 820 F.2d 873, 876 (7th Cir. 1987). We therefore believe that the parties' interest in obtaining vacatur outweighs whatever public interest there may be in the precedent that is the byproduct of the judicial resolution of disputes between parties.[27]

4. If the Court rejects the general rule of vacatur in favor of a more flexible approach, we submit that the standards applied by courts in approving consent decrees would provide an appropriate framework for determining whether to grant vacatur in a particular case. In the consent-decree context, a district court does not automatically enter the decree agreed to by the parties; instead, the court "must satisfy [it]self that the decree is consistent with the Constitution and laws, does not undermine the rightful interests of third parties, and is an appropriate commitment of the court's limited resources."

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[27] To be sure, there may be unusual circumstances, not present in this case, that would render vacatur inappropriate. In particular, vacatur upon settlement may be inappropriate when the judicial system itself has a distinct and legitimate interest in preserving the judgment below, as when the judgment at issue involves contempt of court or otherwise implicates the authority of the courts, rather than the more generalized interest in the precedential or preclusive value of judicial decisions in cases involving other parties. See *In re Memorial Hospital*, 862 F.2d at 1302-1303. In the contempt situation, for example, the court is in a position analogous to that of a party to a case who has not joined in a settlement entered into by the other parties.

Kasper v. *Board of Education*, 814 F.2d 332, 338 (7th Cir. 1987); see *United States* v. *Miami*, 664 F.2d 435, 440-441 (5th Cir. 1981) (en banc) (Rubin, J., concurring); 1B J. Moore, J. Lucas & T. Currier, *Moore's Federal Practice* ¶ 0.409[5], at 331 (2d ed. 1993); see also *Rufo* v. *Inmates of Suffolk County Jail*, 112 S.Ct. 748, 764 (1992); *Firefighers Local No. 93* v. *City of Cleveland*, 478 U.S. 501, 525-526, 529-530 (1986). Given the public interest in settlement that would be furthered by the availability of vacatur, and absent any illegality or fraud on the court in the settlement agreement, this approach would generally lead to the conclusion that vacatur should be granted.[28]

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[28] In determining whether vacatur would conflict with the "rightful interests of third parties," the court would not, in our view, be required to consider the interests of non-parties whose only interest derived from the possible preclusive effect of the judgment. Vacatur would merely deprive those third parties of a windfall; it would not affect their "rightful" interests in the sense that a consent decree imposing affirmative obligations or concretely affecting their primary conduct might do. Cf. *Firefighters Local No. 93* v. *City of Cleveland*, 478 U.S. at 529-530. Courts considering whether to enter a consent decree do not typically take into account the interests of non-parties who might prefer to have the case proceed to final judgment in order to take advantage of nonmutual collateral estoppel, and there is no reason to follow a different approach in the vacatur context.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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